The bankruptcy court shall not be asked to interfere in the complicated process of making credit underwriting decisions. This is particularly true when current underwriting practices are quite successful, with an average of 95 to 97 percent of consumer credit extended today repaid on time.

Mr. President, this amendment permits new uncontrolled and virtually unlimited inquiries into creditor conduct. It encourages complicated and involved discovery and burdensome court proceedings. It introduces unwarranted defenses to strong enforcement of the needs-based provisions of S. 1301, this bill.

The amendment permits a debtor to avoid repaying all his creditors by attacking the good faith of any creditor who brings a motion to enforce the needs-based provisions. And the amendment has no standard for what is good faith. So this is a killer amendment.

Moreover, S. 1301 already contains numerous provisions to make sure creditors are acting appropriately. As I have noted in my previous remarks, this is a well balanced bill that is a combination of months and months of deliberations and cooperation between Senators GRASSLEY and DURBIN and other members of the Senate Judiciary Committee. They, along with other members of the Judiciary Committee, have done a fine job in ensuring that this bill is a fair bill. This balanced and broadly supported legislation not only curbs abuses of the bankruptcy system but also provides unprecedented consumer protections.

Let me begin by saying being a creditor and winding up in bankruptcy court to collect unpaid bills is not a desirable situation for any creditor. Creditors who deal with debtors in bankruptcy, even in the best of circumstances, are likely to recover only pennies on every dollar they are owed.

In any event, S. 1301 already contains nine provisions with rather severe penalties to creditors for improper behavior. We have given due consideration to these concerns.

First, if a creditor brings a motion to dismiss a chapter 7 case and fails, the debtor gets attorney's fees and costs if the creditor was not substantially justified or if the creditor filed the motion in an effort to coerce the debtor.

Second, if a creditor unreasonably refuses a debtor's offer to work out a repayment schedule, the creditor is barred from asserting any claim of nondischargeability or any claim of denial of discharge.

Third, if a creditor willfully violates the automatic stay, the creditor pays the debtor's attorney's fees, actual damages, and punitive damages, if appropriate. We have really gone a long way here.

Fourth, if a creditor fails to comply with the requirements for a reaffirmation agreement, the court can order heavy sanctions and penalties.

Fifth, the legislation will make it much harder for creditors to get determinations of nondischargeability. Only false representations by a debtor that are considered ''material'' will be actionable. If a creditor makes an unsuccessful claim of nondischargeability or denial of discharge, the creditor is liable for the debtor's attorney's fees, costs, and punitive damages, if the creditor's claim is not substantially justified. The reverse is not true. If the creditor wins the nondischargeability proceeding, the debtor does not have to pay the creditor's attorney's fees. So it isn't reversible.

Sixth, if a creditor willfully violates the postdischarge injunction, the creditor is liable for minimum damages of $5,000 and attorney's fees and costs, with the possibility of treble damages.

Seventh, if a creditor fails to comply with Truth in Lending Act requirements for certain mortgage loans, the creditor's claim will not be recognized or paid in bankruptcy. For instance, if a creditor does not provide for certain disclosures, or fails to meet the requirements of the act, even if it is a technical violation, the creditor's claim will be denied in bankruptcy. In other words, the debt, both principal and interest, will be completely forgiven. These new penalties are in addition to those penalties already present in the Truth in Lending Act itself.

Eighth, if a creditor willfully fails to credit payments to a bankruptcy plan, the creditor is liable for minimum damages of $5,000 and attorney's fees and costs, with the possibility of treble damages.

And ninth, if a creditor's proof of claim is disallowed or reduced by 21 percent or more, the debtor gets attorney's fees and costs, and so forth.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. As you can see—I hope we can vote down this amendment—a lot of hard work has been put into this.

Mr. President, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. There is time remaining.

Mr. REED. How much time is remaining?

The PRESIDING OFFICER. Two minutes 6 seconds.

Mr. REED. Thank you.

I applaud all the consumer protections that the Senator from Utah has listed, but I would like to add one more. I would like to add, along with the Consumers Union and the Consumer Federation of America, the protection of looking at the good-faith operation of a creditor who is demanding that a debtor be placed from chapter 7 into chapter 13.

With respect to the standard, my standard is as equally well defined as the bad-faith standard that exists today within the legislation, because good faith and bad faith are something that the banking judge should be able to determine, and it does not require an elaborate searching through of underwriting policies and looking through documentation and going around the country.

What it does require is that that trier of fact, that bankruptcy judge, determine whether or not the creditor has abused the relationship, either by intimidation or deceit. All these things would rise to the level of a lack of good faith. I suggest very strongly the bankruptcy judge can do that, and should do that in this context.

Mr. President, I yield the remainder of my time to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. How much time is remaining?

The PRESIDING OFFICER. Fifty-two seconds.

Mr. DURBIN. I rise to support this amendment because I think it makes a good bill even better. We are trying to stop the abuses in bankruptcy. We say if you want to file for bankruptcy and you do not have good cause, we are going to throw you out of court. We might penalize you, and we are going to do the same thing to your attorney. So from the debtor side—the person who owes the money—it is a pretty tough standard.

What the Senator from Rhode Island says is, let's have a standard as well for the collection agencies and the creditors who are not treating people fairly. I think we want to eliminate all abuses in the bankruptcy court, not just by the debtors and their attorneys, but by the creditors, too. What the Senator from Rhode Island suggests is fairness and balance. It gives the court the ability to look at strong-arm tactics used by collection agencies and creditors to the detriment of debtors who are trying to get out of debt.

VISIT TO THE SENATE BY MEMBERS OF THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

Mr. LOTT. Mr. President, during this vote, I would like to urge Members of the Senate to go to the back of the Chamber and visit with our special guests we have here—the Prime Minister of the Republic of Singapore, Goh Chok Tong, the Foreign Minister, and their Ambassador to the United States. We welcome them to the United States and to the Senate Chamber.

[Applause.]

CONSUMER BANKRUPTCY REFORM ACT OF 1998

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3610

The PRESIDING OFFICER. All time has expired.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Utah to table the Reed amendment No. 3610. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The result was announced—yeas 63, nays 36, as follows:

[Rollcall Vote No. 281 Leg.]

YEAS—63

Abraham	Frist	Mack
Allard	Gorton	McCain
Ashcroft	Graham	McConnell
Bennett	Gramm	Murkowski
Biden	Grams	Nickles
Bond	Grassley	Reid
Breaux	Gregg	Robb
Brownback	Hagel	Roberts
Burns	Hatch	Roth
Campbell	Helms	Santorum
Chafee	Hutchinson	Sessions
Coats	Hutchison	Shelby
Cochran	Inhofe	Smith (NH)
Collins	Johnson	Smith (OR)
Coverdell	Kempthorne	Snowe
Craig	Kohl	Specter
D'Amato	Kyl	Stevens
DeWine	Landrieu	Thomas
Domenici	Lieberman	Thompson
Enzi	Lott	Thurmond
Faircloth	Lugar	Warner

NAYS—36

Akaka	Durbin	Leahy
Baucus	Feingold	Levin
Bingaman	Feinstein	Mikulski
Boxer	Ford	Moseley-Braun
Bryan	Harkin	Moynihan
Bumpers	Hollings	Murray
Byrd	Inouye	Reed
Cleland	Jeffords	Rockefeller
Conrad	Kennedy	Sarbanes
Daschle	Kerrey	Torricelli
Dodd	Kerry	Wellstone
Dorgan	Lautenberg	Wyden

NOT VOTING—1

Glenn

The motion to lay on the table the amendment (No. 3610) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. ABRAHAM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

CHILD CUSTODY PROTECTION ACT

UNANIMOUS CONSENT REQUEST—S. 1645

Mr. HATCH. Mr. President, I ask unanimous consent that the only amendments in order to S. 1645, the child custody bill, other than the substitute, be the previously filed amendments which are at the desk and limited to the following:

Senator FEINSTEIN: to exempt adult family members of a minor from prosecution;

Senator BOXER: to allow consent of a parent after a minor's abortion;

Senator KENNEDY: to require deference to State authorities;

Senator KENNEDY: to provide an exception for State laws that have been enjoined or held unconstitutional or that State enforcement authorities have declined to enforce;

Senator HARKIN: to provide an exception in the case of rape or incest;

Senator LEAHY: to provide a complete substitute, which makes the offense the use of force or threats of force to transport a minor;

And a relevant amendment by Senator ABRAHAM.

I further ask unanimous consent that there be no other amendments in order, including second degrees; that following the disposition of the above-listed amendments, the bill be read a third time and the Senate proceed to vote on passage of the bill, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. TORRICELLI. Reserving the right to object.

Mr. LEAHY. Mr. President, I am advised there is an objection, so I, therefore, object.

The PRESIDING OFFICER. Objection is heard.

Ms. COLLINS. Mr. President, I rise today to engage my colleague from Michigan, the sponsor of the Child Custody Protection Act, in a colloquy to clarify the legislation's intent with regard to existing State parental notification laws.

The State of Maine has a carefully constructed adult consent requirement. In my state, a minor under 18 may obtain an abortion with the informed consent of either one parent, a guardian or an adult family member. Absent that consent, she may obtain an abortion if she receives counseling from a physician, psychiatrist, ordained member of the clergy, nurse, physician's assistant or qualified counselor. She may also obtain an abortion without parental or adult family member consent by securing a court order.

Will the legislation we are considering today in any way override or supersede Maine State law?

Mr. ABRAHAM. I want to thank my colleague from Maine for this opportunity to answer important questions on the Child Custody Protection Act. The intent of this legislation is to protect state-passed parental involvement laws. Residents of the states have supported and passed parental involvement laws and they deserve to have their will protected. The Child Custody Protection Act would have no effect on Maine's parental consent law as it applies to minors who reside in Maine. It would in no way override or supersede that law with respect to Maine minors, families, or others. The only effect of legislation would be to restrict a non-parent, non-guardian from transporting a minor from another state where the minor resides to Maine in order for the out-of-state minor to obtain an abortion in Maine and avoid the minor's home state parental involvement law.

Ms. COLLINS. Opponents of this bill contend that health care providers in states like Maine that do not have a law requiring parental involvement could still be liable for conspiracy or as accomplices under this legislation. The liability would presumably apply when they perform or participate in performing an abortion on a minor brought into Maine in violation of the proposed statute. Is this analysis correct? Are there any circumstances under which Maine's health care providers performing or participating in the performance of what, under Maine state law, would be legal abortion on a minor, could be held liable under your bill? Would these providers have any new legal responsibilities as a consequence of the enactment of this legislation?

Mr. ABRAHAM. This is an important point to clarify. The violation of this act is not the performance of an abortion. The violation of this act is the transportation of a minor across state lines to obtain an abortion without involving that minor's parent as required by the law of her home state. The abortion provider would only be in violation of this act if the provider actually conspired to transport or assisted in transporting the minor across state lines to obtain an abortion without the parental involvement that the minor's home state required. Providers who had not engaged in any such activities related to the transport of a minor would not incur any criminal liability or face any new legal responsibilities under this legislation.

Mr. DEWINE. Mr. President, I rise today to offer my strong support for the Child Custody Protection Act of 1998, which would make it a crime to transport a child across state lines to circumvent a state law requiring parental involvement or a judicial waiver for a minor to obtain an abortion.

Twenty-two states have laws saying a parent or guardian has to be notified or their consent given if a child is trying to get an abortion. What's happening now—far too often—is that people who aren't parents or guardians are taking the children across state lines, secretly, to get abortions in another state where parental notification isn't required.

It is my hope that this bill will achieve two important goals—to protect the health of children and to protect the rights of parents. In fact, Mr. President, I believe that empowering parents is the single biggest investment we can make in ensuring the health of our children.

Parents have the right and duty to be involved in the moral and medical decisions that affect their children's welfare.

When it comes to parental notification on abortion, the American people have reached a clear consensus. By a huge majority—80 percent—they favor parental notification. And 74 percent favor not just parental notification, but parental consent. This is a clear expression of the national wisdom. This legislation is an effort to make that kind of informed decision possible.